was given for? There is every reason to believe the parties themselves intended the note to be negotiable, for, in addition to the fact that it was an "order" note, the bank would naturally want an instrument which it could further negotiate and use the proceeds of to pay the certificate of deposit when it became due.

The fact that the instrument shows on its face that it was given for a consideration which is still executory does not render it non-negotiable. Our own case of Flood v. Petry[7] settled this point, stating the rule generally prevailing throughout the country.[8]

As for the use of the word "reimburse," it certainly is not desirable that the negotiability of instruments should turn upon a quibble over language. Moreover, why should it be held that the bank could only properly be "reimbursed" after it had paid out something? That it should not is clearly pointed out in the minority opinion: "Nor am I . . . . able to follow the argument which would make this promise to be conditional by reason of the use of the word 'reimburse' used in the so-called indorsement of the note; for, I take it, every promissory note, negotiable or non-negotiable, is given to reimburse somebody for something, it may be credit only."

It is submitted that decisions like Sacred Heart Church Building Committee v. Manson tend to produce doubt and uncertainty and are opposed to the spirit of the Negotiable Instruments Law. Is it going too far to suggest that courts should require nothing short of a positive condition in the very terms of the note to defeat its negotiability where it is otherwise fully negotiable in form? Surely this is not asking too much of the parties to the instrument, for if the maker intends to make a conditional promise he can easily do so, and in fact usually will speak definitely, either by promising "on condition that," or by using some other words which carry the same effect. *E. S*

CLAYTON ACT: INJUNCTIONS IN LABOR DISPUTES.—In the case of *Montgomery v. Pacific Electric Railroad Company*,[1] the employees of the railway had agreed to deal with the employer directly, and not through union agents. Nevertheless, aided by the defendants, eastern officials of the Brotherhood of Railway Engineers, the employees formed a division of the union and struck to have their

[7] (1909) 165 Cal. 309, 132 Pac. 256, 46 L. R. A. (N. S.) 861. A recent decision illustrates one limitation on this case, however. Spotten v. Dyer (Aug. 8, 1919) 29 Cal. App. Dec. 503, 184 Pac. 23. If the holder of a note knows that it is given as a future payment under a contract providing for certain acts to be performed as a condition precedent to payment, the note is non-negotiable.

[8] Siegel et al. v. Chicago Trust Co. and Savings Bank (1890) 131 Ill. 569, 23 N. E. 417. See also First National Bank v. Sullivan (1911) 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C 930, which establishes the rule that if the note had been payable on demand, or at any time before a year, at which time the bank's certificate of deposit was due, the promise would not be conditional, for the maker would agree to pay before the bank could be called upon to meet the certificate of deposit.

[1] (May 26, 1919) 258 Fed. 382.

organization recognized. An injunction was issued on the ground that the Constitution secures the right of free and inviolable contract. In the present case non-membership in a union was a condition to which employer and employee had agreed, and the defendants were enjoined from inducing its breach. The question involved is how far labor, in its strife for betterment, is protected by the Clayton Act. The authority for the restraining order is found in Hitchman Coal & Coke Company v. Mitchell[2] and the defense rests on the proposition that the Hitchman case was begun before the passage of the Clayton Act and is not law now.

In the United States the use of injunctions in labor disputes is not new[3] and its growth has been practically uninterrupted, though accompanied by a storm of protest.[4] These injunctions have been justified on the grounds that they prevent irreparable injury and a multiplicity of suits, and that they provide an adequate remedy where damages would be inadequate.[5] But, above all, it is recognized that the public has been drawn in and its interest can be protected only by weighing the rights of social groups involved, then granting or withholding an injunction by applying the doctrine of balance of convenience.[6]

When the English equity practice was adopted under our Constitution, injunctions were granted only to protect property.[7] The necessary property right was found in the probable expectancy of the employer of having labor flow freely to him and of having his contracts performed.[8] A contention against this[9] culminated in a declaration in the Clayton Act that human labor is not a commodity.[10]

Under the Interstate Commerce Act and the Sherman Anti-Trust Act the use of the injunction had so increased[11] that in 1914 the Clayton Act provided that, except to avoid irreparable injury, injunctions should not be used to prevent labor unions from carrying out by lawful means their legitimate objects.[12] There is a statute of similar import in California,[13] and both acts are merely declaratory of the general principles of equity proclaimed by the courts.[14]

Aside from preventing the possible dissolution of labor unions as illegal combinations in restraint of trade, the Clayton Act has, for several reasons, had little effect. In the first place, the Hitchman case[15] is cited as a precedent under it, although, having commenced

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[2] (1017) 245 U. S. 229, 62 L. Ed. 260, 38 Sup. Ct. Rep. 65; annotated in 6 California Law Review, 302.

[3] For a review of the subject see 65 Central Law Journal, 273.

[4] 69 Central Law Journal, 129; 71 Central Law Journal, 5.

[5] 5 Pomeroy, Equity Jurisprudence (4th ed.) § 613.

[6] 31 Harvard Law Review, 482.

[7] 1 High on Injunctions (4th ed.) § 20b; 71 Central Law Journal, 5.

[8] 5 Pomeroy, Equity Jurisprudence (4th ed.) §§ 587-593.

[9] Supra, 7.

[10] 38 U. S. Stats. at L. 731, § 6.

[11] Laidler, Boycotts and the Labor Struggle, p. 170.

[12] 38 U. S. Stats. at L., 738, § 20.

[13] Cal. Stats. 1903, p. 289; appendix to Cal. Pen. Code, p. 736.

[14] Cf. 5 Pomeroy. Equity Jurisprudence (4th ed.) § 592 and ff.

[15] Supra, n. 2.

before the passage of the act, it could not have been controlled thereby. Moreover, the act only governs cases in interstate commerce, and the Hitchman case came into a federal court purely on a question of diversity of citizenship, and was decided according to the common law of Virginia.

Next, there is the very disputable question of what are lawful means of carrying out the objects of the unions.[16] In California all picketing is held to be inherently unlawful.[17]

While there is a conflict of judicial opinion concerning the right to strike, it is clearly law in this state that "it is not the duty of one man to work for another unless he has agreed to, and if he has so agreed, but for no fixed time, either may end the contract whenever he chooses. . . . The right to quit is absolute. . . . Whatever one may do alone, he may do in concert with others. . . . Workingmen have the right to organize. . . . They have the right to strike. . . . A peaceable and ordinary strike . . . . is not a violation of law."[18] The question of the legality of a strike which involves a breach of contract was left open in California until the principal case and one other recent decision.[19] In both instances it was held, in accordance with the weight of American authority, that it is unlawful for a third person to induce an employee to break his contract of employment. It is difficult to understand the basis of this inviolability of contract. Both the federal and state constitutions only protect contractual obligations from legislative interference.[20] Moreover, the realization that there is no real freedom of contract where the individual laborer is called on "to pit his strength against the might of organized capital"[21] has led to the recognition of unions,[22] and to legislation for the workman's protection.[23] In addition, the practical effect of injunctions in labor disputes is to enforce specifically contracts for personal services, a result in conflict with general equitable doctrines.[24]

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[16] 5 Pomeroy, Equity Jurisprudence (4th ed.) §§ 593-612.

[17] 7 California Law Review, 276; Rosenburg v. Retail Clerks' Assn. (1918) 27 Cal. App. Dec. 769, 770, 177 Pac. 864; Moore & Moore v. Cooks', Waiters' and Waitresses' Union (1919) 28 Cal. App. Dec. 205, 179 Pac. 417; Goldberg-Bowen v. Stablemen's Union (1906) 149 Cal. 429, 86 Pac. 896, 117 Am. St. Rep. 145, 9 Ann. Cas. 1219, 8 L. R. A. (N. S.) 460; Pierce v. Stablemen's Union (1909) 156 Cal. 70, 103 Pac. 324.

[18] Parkinson Co. v. Building Trades Council (1908) 154 Cal. 581, 598, 98 Pac. 1027, 1034, 21 L. R. A. (N. S.) 550, 560; Union Labor Hospital Assn. v. Vance Redwood Co. (1910) 158 Cal. 551, 112 Pac. 886, 33 L. R. A. (N. S.) 1034; Rosenberg v. Retail Clerks' Assn., supra, n. 17; Pierce v. Stablemen's Union, supra, n. 17.

[19] Patterson Glass Co. v. Pickering (1919) 28 Cal. App. Dec. 1385, 1390. See 5 Pomeroy, Equity Jurisprudence (4th ed.) §§ 587, 589. Boyson v. Thorn (1893) 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233, a leading case on the proposition that the inducement of a breach of contract is not actionable, admits an exception in the case of contracts of employment.

[20] U. S. Const., Art. I, § 10; Cal. Const., Art. I, § 16.

[21] 69 Central Law Journal, 129. See Mr. Justice Brandeis, with concurrence of Mr. Justice Holmes and Mr. Justice Clarke, dissenting in Hitchman Coal & Coke Co. v. Mitchell (1917) supra, n. 2, at p. 263.

[22] Puget Sound Traction L. & P. Co. v. Whitney (1917) 243 Fed. 945.

[23] General Laws of California, 1917-1919, title 242, act 1537, p. 1200.

[24] 4 Pomeroy, Equity Jurisprudence (4th ed.) § 1343; 14 R. C. L. 385; Parkinson Co. v. Building Trades Council, supra, n. 18. There is a slight

The irreparable injury is easily found since the loss caused by a strike cannot be measured by any pecuniary standard.[25] There is, however, one decision, in another jurisdiction, which holds that an interference with business or trade is not sufficient to warrant an injunction under the Clayton Act.[26]

The Montgomery case might have been decided on a question of war power, but since that was used only as a ground for federal jurisdiction, it will probably stand as precedent after the declaration of peace. *H. V. D.*

CONSTITUTIONAL LAW: ENCROACHMENT BY TREATY UPON THE RESERVED POWERS OF THE STATES.—The ability of the federal government, through its treaty making power, to encroach upon the reserved powers of the several states, has recently been demonstrated in a striking manner. In 1913, Congress attempted to protect certain migratory birds by providing that they should be hunted only in accordance with regulations of the Department of Agriculture.[1] This provision, however, was held unconstitutional as an infringement of the reserved powers of the states.[2] In 1916, a treaty was concluded between the United States and Great Britain for the protection of migratory birds.[3] In 1918, to give effect to this treaty, Congress provided that the migratory birds included therein should be hunted only in accordance with regulations of the Department of Agriculture.[4] This latter act has been upheld in *United States v. Samples*,[5] and in *United States v. Thompson*,[6] as a valid enactment in pursuance of the treaty making power.

The decisions in the principal cases, although suggesting a possible method for unwarrantedly extending the federal power, seem sound upon principle and precedent. By express constitutional provision, "all treaties made . . . . under the Authority of

exception to this rule which permits pressure to enforce indirectly contracts for personal services of peculiar value. Lumley v. Wagner (1852) 5 DeG. L. and S. 485, 65 Eng. Rep. R. 1209; affirmed 1 DeG M. & G. 604, 42 Eng. Rep. R. 647, 16 Jur. 871, 6 English Ruling Cases, 652, with annotation 662, 665.

[25] Washingtonian Home of Chicago v. City of Chicago (1917) 281 Ill. 110, 117 N. E. 737; Parkinson v. Building Trades Council, supra, n. 18, at p. 592; also supra, n. 5.

[26] Duplex Printing Press Co. v. Deering (1918) 252 Fed. 722.

[1] Appropriation Act for the Department of Agriculture, March 4, 1913, ch. 145, 37 U. S. Stats. at L. 847; U. S. Comp. Stats. (1918), § 8837.

[2] United States v. McCullagh (1915) 221 Fed. 288; United States v. Shauver (1914) 214 Fed. 154; State v. McCullagh (1915) 96 Kan. 786, 153 Pac. 557; State v. Sawyer (1915) 113 Me. 458, 94 Atl. 886, L. R. A. 1915F 1031, Ann. Cas. 1917D 650.

[3] 39 U. S. Stats. at L. 1702.

[4] 40 U. S. Stats. at L. 755-7, U. S. Comp. Stats. (1918) Appendix, §§ 8837a-m.

[5] (July 2, 1919) 258 Fed. 479.

[6] (June 4, 1919) 258 Fed. 257. It is interesting to note that this decision is by the same court which held the Act of 1913 unconstitutional in United States v. Shauver, supra, n. 2.